

STATE OF WISCONSIN : CIRCUIT COURT : MILWAUKEE COUNTY  
Branch 42

STATE OF WISCONSIN,

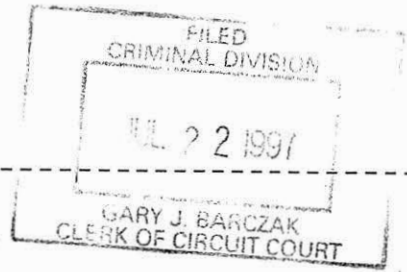
Plaintiff,

vs.

Case No. F-954600

RICO SANDERS,

Defendant.



HEARING

December 19, 1996

Before the Honorable  
DAVID A. HANSHER  
Circuit Court Judge,  
Presiding.

CHARGE: Burglary, Armed, Robbery, Armed, Second Degree  
Sexual Assault, Aggravated Burglary, First  
Degree Sexual Assault, Aggravated Burglary,  
First Degree Sexual Assault, First Degree Sexual  
Assault, Burglary, Armed, First Degree Sexual  
Assault.

A P P E A R A N C E S

MIRIAM FALK, Assistant District Attorney,  
appearing on behalf of the State.

EDWARD LITTLE, Attorney at Law, appeared on  
behalf of the Defendant.

Defendant Present in Person.

JOANNE ALLISON - OFFICIAL REPORTER

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WITNESS:

Dr. Molli Rolli

EXHIBITS:

No. 1

I N D E X  
DIRECT      CROSS      REDIRECT      RECROSS

4      14

OFFERED      RECEIVED

5      5

P R O C E E D I N G S

THE CLERK: State of Wisconsin vs. Rico Sanders, Case No. F-954600. Appearances, please?

MS. FALK: The State is appearing by Assistant D.A. Miriam Falk.

MR. LITTLE: Edward Little appears on behalf of Rico Sanders, who I assume will be coming quite shortly.

THE COURT: While we're waiting for the defendant to be produced, we're here for a hearing on a competency report, is that it? A challenge to the report?

MR. LITTLE: Yes.

THE COURT: Do I have a copy of the report?

MS. FALK: You should. It's dated October 14, 1996.

THE COURT: So I should get Dr. --

THE CLERK: Do you want me to get it here and then transfer it up to your phone?

THE COURT: Is that what what we did last time or should I try it directly?

THE CLERK: Let me get it on your phone.

THE COURT: Okay. For the record, we're calling Dr. Molli Rolli. M-o-l-l-i, R-o-l-l-i.

THE COURT: Dr. Rolli?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Hold on one second. Would

3 you raise your right hand?

4 THE WITNESS: Sure.

5 DR. MOLLI ROLLI, called as a witness on

6 behalf of the State, having been first duly sworn, was

7 examined and testified as follows:

8 THE COURT: And you know why you're appearing

9 via telephonic contact I guess is the term?

10 THE WITNESS: Yes. I believe so.

11 THE COURT: This is regarding the case of

12 State of Wisconsin vs. Rico Sanders.

13 THE WITNESS: Right.

14 THE COURT: Okay; and you submitted a letter

15 indicating you thought he was competent on October 14,

16 1996, correct?

17 THE WITNESS: That's correct.

18 THE COURT: Okay. We have the defendant in

19 court with his attorney. We have a District Attorney

20 here and we're ready to take some testimony for you --

21 from you.

22 THE WITNESS: Okay. Sure.

23 DIRECT EXAMINATION

24 BY MS. FALK:

25 Q Dr. Rolli, this is Miriam Falk, I'm the prosecutor on

1           1           this case. I will be going first with my questions.

2           A        Okay.

3           Q        The letter that's dated October 14th of 1996, would you

4                agree that that is a document that consists totally of

5                four individual pages?

6           A        Just trying to locate the letter here in front of me.

7                Yes.

8           Q        And there is at the end of this letter your signature;

9                is that correct?

10          A        That's correct.

11          Q        Before you signed and sent this letter did you review

12                it for accuracy?

13          A        Yes, I did.

14          Q        And based upon that review is there anything in this

15                letter that you believe is incorrect or needs to be

16                changed?

17          A        There is one thing, in fact. In the letter I believe I

18                state that Mr. -- I'm getting a lot of echo here. In

19                the letter I believe I state that Mr. Sanders does not

20                have a conduct disorder, and on review of the case he

21                actually does meet the diagnostic criteria for conduct

22                disorder. That, however, does not affect his

23                competency.

24          Q        So that would be underneath the diagnosis section on

25                Page 3. The correct version should be that he does

1                   1                   meet the diagnostic criteria for conduct disorder?

2           A       Yeah. What I said there was that Mr. Sanders has met

3                   this diagnosis in the past but his behavior on the unit

4                   has not been indicative of a conduct disorder.

5                   Actually his behavior on the unit is immaterial and he

6                   still does meet the criteria for a conduct disorder.

7           Q       And in terms of the ultimate conclusion, the fact that

8                   he meets the criterion for conduct disorder is -- does

9                   not affect your opinion relating to his competency; is

10                  that correct?

11          A       That's correct.

12          Q       And this document other than that correction is

13                  accurate?

14          A       Yes, it is.

15                               MS. FALK: Your Honor, for the purposes of

16                               the record I will be referring to this, if we could

17                               have this marked as Exhibit No. 1.

18                               THE COURT: Sure. It will be marked and

19                               accepted.

20                               MS. FALK: And I would move this into

21                               evidence at this time.

22                               THE COURT: Any objection, counsel?

23                               MR. LITTLE: No.

24                               (Exhibit No. 1 was received in evidence)

25                               MS. FALK:

1           1           Q     Dr. Rolli, before we begin talking specifically about  
2                       the contents of your report, I would like you to  
3                       explain for the Court your educational background.  
4           A     Okay. Starting with what?  
5           Q     What degrees do you have and in what?  
6           A     I have a medical degree that I received from Mayo  
7                       Medical School. I attended a psychiatric residency at  
8                       the University of Wisconsin, which I completed last  
9                       June, and I'm board eligible in psychiatry.  
10                    THE COURT: Counsel, will you stipulate that  
11                    she's competent to testify here as an expert?  
12                    MR. LITTLE: Yes, I will.  
13                    THE COURT: Okay. The Court will accept her  
14                    as an expert. Proceed.  
15                    MS. FALK:  
16           Q     Dr. Rolli, you are currently working at the Mendota  
17                       Mental Health Institute, is that correct?  
18           A     That's correct.  
19           Q     And during the course of your work there have you  
20                       become familiar with the legal standards related to  
21                       whether a person is competent or not competent to  
22                       proceed to trial?  
23           A     Yes.  
24           Q     Did you take those legal standards into consideration  
25                       when you were rendering your report of October 14th of

1 1996?

2 A I did.

3 Q In addition to what is listed in your report of October  
4 19th of 1996 have you had the opportunity since it is  
5 now December 19, 1996 to have additional observations  
6 and information relating to Mr. Sanders?

7 A Some. He was transferred off our unit a little while  
8 ago and I'm not sure the exact date. Let me see here.  
9 In any case, I spoke to the people on the unit that he  
10 was on most recently. He had been attending a  
11 competency group there and they felt that from his  
12 participation he demonstrated that he was, in fact,  
13 competent. He did not demonstrate that to me when I  
14 had seen him but they felt that he had there.

15 Q Aside from your conversation with the instructors of  
16 the competency group, was there any other information  
17 that you received that you believe is pertinent to your  
18 ultimate opinion in this case?

19 A Nothing that's -- nothing that really adds to what I've  
20 already said.

21 Q Based on the items that you have listed in your report  
22 of October 14th of 1996, the information you got  
23 directly from Mr. Sanders, your review of the various  
24 reports and also your observations and your  
25 conversations with staff members from Mendota Mental



1 Health Institute, do you have an opinion about whether  
2 the defendant, Mr. Sanders, is competent to proceed to  
3 trial?

4 A Yes, I do.

5 Q What is your opinion?

6 A My opinion is that he is competent to proceed to trial.

7 Q Will you describe for us, please, why you believe that  
8 Mr. Sanders is competent to proceed to trial?

9 A His -- it's a little bit complicated because he was not  
10 straightforward with me when I directly interviewed  
11 him. My belief that he's competent to stand trial is  
12 based on his behavior on our unit, which indicated that  
13 he was competent to -- that he was able to follow all  
14 the rules and procedures, that his level of interaction  
15 with his peers and with staff was indicative of  
16 somebody who understood what was going on around him  
17 and had a fairly good grasp of legal procedures.

18 Q Can you give an example for us, please, of a manner in  
19 which his behavior on the unit was different than his  
20 appearance and his behavior with you, personally?

21 A I gave several examples in the letter. I would refer  
22 to the example about playing basketball. Mr. Sanders  
23 regularly engaged in basketball games on the unit with  
24 the activity staff and seemed to understand the rules  
25 and was able to perform at that game without any

2           1           special instruction, but when I spoke to him about it,  
          2           he was unable to repeat even the simplest kind of rules  
          3           or procedures of the game.

          4           Q    Dr. Rolli, another example that you gave related to a  
          5           card game in which Mr. Sanders participated and during  
          6           which he was the person who kept track of the score.  
          7           Do you recall that particular example?

          8           A    Yes, I do.

          9           Q    Can you explain for us why that particular example was,  
         10           again, another indication that Mr. Sanders is able to  
         11           follow rules and to communicate and to understand  
         12           matters including legal matters like those he would  
         13           need to understand should he be competent to proceed to  
         14           trial?

         15           A    The card game in which he kept score was Spades, which  
         16           is, you know, a modestly complicated scorekeeping  
         17           procedure where you have to keep track of bidding and  
         18           then add the score related to the number of tricks that  
         19           people get. It requires a fairly good level of  
         20           concentration and the ability to add and subtract and  
         21           Mr. Sanders kept a very accurate tally of the score.  
         22           It was legible and understandable to anybody who would  
         23           look at it.

         24                    When I spoke to him, he was unable to add or  
         25           subtract even on the simplest level, so it was just

2

1 inconsistent. I think he demonstrated in the card game  
2 that his ability to concentrate was good, that he could  
3 stay focused on a game for a long period of time and  
4 that he could keep track of everybody's score  
5 accurately.

6 Q And how do those skills translate into skills that are  
7 relevant to the issue of whether he is competent to  
8 stand trial?

3

9 A It has more to do with the implication that he was  
10 making to me that he was unable to concentrate on even  
11 the simplest thing. When we talked about the  
12 participants in a courtroom and I explained who the  
13 judge was and who the jury was to him, five minutes  
14 later when I asked him who they were, he couldn't tell  
15 me. He even wrote something down on a paper and  
16 couldn't remember to read what he had written on the  
17 paper. That's just grossly different from what he was  
18 doing in the card game. So his lack of cooperation  
19 with me prevented me from being able to discuss these  
20 issues straightforwardly with him.

21 Q There was one other example that stands out in my mind  
22 and that was with you. You indicated that he was  
23 unable to tell you how much he might pay for a pizza;  
24 is that correct?

25 A That's correct.

1 Q But Mr. Sanders, when called upon to actually do that  
2 activity, did order a pizza and then paid for it  
3 correctly, is that correct?

4 A He did that routinely on the unit. He and other people  
5 on the unit would get together to order out pizza and  
6 he participated in that and understood how much he had  
7 to pay for that, et cetera, without any problem and  
8 without asking for any guidance from staff.

9 Q From a clinical standpoint these discrepancies between  
10 his actual behaviors on the unit and his obviously  
11 demonstrated abilities in that circumstance and his  
12 lack of cooperation or apparent lack of ability to do  
13 those same things with you, what clinical significance  
14 does that have to you?

15 A It indicates to me that he is attempting to feign  
16 symptoms to me of a mental illness or at least to feign  
17 incompetence, that he is purposefully acting like he  
18 doesn't understand issues with me, that it's apparent  
19 from his behavior he would be able to understand fairly  
20 easily.

21 THE COURT: Any other questions from the  
22 State?

23 MS. FALK: Just a couple more.

24 Q Your opinion in what you talked about earlier, you  
25 discussed something called a competency group. That

1 was the one thing that was an additional piece of  
2 information. Will you describe for the Court what the  
3 competency group is, please?

4 A Yes. It's a group that's held regularly on a number of  
5 our units for the men that are here to be treated to  
6 competency where they discuss court procedures, how  
7 trials work, what the different participants in the  
8 room are at a hearing, et cetera, in order to prepare  
9 the guys for facing their charges, and it's an  
10 educational group. I'm not sure how big the group was  
11 that he was involved in but it's usually several guys  
12 and a social worker.

13 Q And the information that you received from the  
14 instructors in this group was that Mr. Sanders was, in  
15 fact, demonstrating competence specifically relating to  
16 legal issues; is that correct?

17 A That's correct.

18 Q Now, does that information change at all the opinions  
19 that you have given in your October 14, 1996 letter?

20 A I can -- my opinion that Mr. Sanders is competent has  
21 not changed and all I can say from that is that when he  
22 was malingering, he was doing it with me. He wasn't  
23 necessarily doing it with them.

24 THE COURT: Are all your opinions to a  
25 reasonable degree of medical certainty?

3 1 THE WITNESS: Yes.

2 THE COURT: Or psychological certainty?

3 THE WITNESS: Yes.

4 MS. FALK:

5 Q The only other question that I have, Doctor, is during  
6 the course of time that Mr. Sanders was at the Mendota  
7 Mental Health Institute did he -- did anybody report  
8 observing him have any kind of hallucinatory symptoms  
9 either auditory or visual, for example, seeing a  
10 monkey, seeing a dog, talking to a dog, anything like  
11 that?

12 A He did not do that while he was on my unit. I don't  
13 have the older records. It was my impression that he  
14 was not thought to be hallucinating. He did when he  
15 first was admitted to our unit say that he had heard  
16 voices in the past but he said that he stopped hearing  
17 voices in jail and that he hadn't hallucinated since he  
18 came to Mendota.

19 THE COURT: Anything else?

20 MS. FALK: No, not -- nothing at all.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. LITTLE:

24 Q Yes. Good afternoon, Doctor.

25 THE COURT: Speak in the microphone.

3 1 MR. LITTLE:

2 Q Doctor, how long have you been employed in your present  
3 capacity?

4 A Since July of 1996.

5 Q Mr. Sanders was admitted to Mendota on June 25, 1996;  
6 is that correct?

7 A I would have to check the record. Yes. June 25.

8 Q Does that sound about -- around the approximate time  
9 that he was admitted?

10 A It is correct. I have it in front of me. Yes.

4 11 Q And he was admitted for the purposes of an assessment,  
12 correct?

13 A That's correct.

14 Q And you were the doctor or mental health professional  
15 that was assigned to do that assessment, correct?

16 A Not initially. He was on a different unit when he was  
17 first assessed and he saw a different doctor who  
18 extended his time here, that you should have that  
19 letter as well. That's a letter from Dr. Hammer.

20 Q Is that the doctor in the unit that you previously  
21 indicated that you did not obtain the complete records  
22 from?

23 A For -- the complete records are here. It's just that  
24 it's a stack about, you know --

25 Q Are you telling this Court that you did not totally

4 1 review all of those records because they were so  
2 voluminous?

3 A No. I reviewed the pertinent parts of those records.  
4 I don't have those records all in front of me.

5 Q And what would you determine as being pertinent?

6 A Would be the assessments done by the previous  
7 physicians, the treatment reviews, the monthly reviews,  
8 medication, any assessments, medical problems by the  
9 medical physician here.

10 Q So that it is possible that hidden in some of that  
11 material that there might be some indication that he  
12 was hallucinating to some extent at some particular  
13 time?

14 A I suppose that's possible. It would be unusual for  
15 them to not mention that in the summaries at the  
16 monthly meetings.

17 Q But it's a possibility, correct?

18 A Correct. Mr. Sanders, himself, said he did not  
19 hallucinate while he was here.

20 Q Do you know approximately how long Mr. Sanders was at  
21 Mendota?

22 A Well, he -- he was here from June 6, 1996, to when he  
23 was just transferred to you now with some episodes of  
24 going back to court.

25 Q And such an assessment is a process of almost



4 1 continuous investigation; is that correct?

2 A That's correct.

3 Q And that is over a long period of time, correct?

4 A That's correct.

5 Q Did you perform any scientific test in conjunction with

6 this assessment?

7 A Well, I gave him a mini mental state examination which

8 is a standardized test of memory. I reviewed that in

9 the letter.

10 Q And I understand that Mr. Sanders scored on that test

11 six over thirty which is consistent with severe

12 dementia, is that correct?

13 A That's right.

14 Q What is the definition of severe dementia?

15 A Severe dementia is -- it's a severe problem with memory

16 on mainly short-term memory that's typical of a person

17 with Alzheimer's disease. Severe dementia would

18 indicate somebody who is unable to take care of their

19 own basic daily needs, that would need nursing

20 assistance or some kind of assistance to wash their

21 clothes and brush their teeth and get dressed and so

22 on.

23 Q And they might forget certain important things during

24 the day, correct?

25 A Lots, if they had severe dementia, yes.

4           1           Q       That is correct, right?

          2           A       That is correct.

          3           Q       Certain important things like legal issues?

          4           A       Sure.

          5           Q       Is it a -- strike that. A person with severe dementia,

          6                    would they have difficulty at some point remembering

          7                    legal issues during trial?

          8           A       Yes.

          9           Q       Would they have difficulty remembering issues that are

         10                    related to a particular case that might assist their

         11                    defense counsel?

         12           A       Yes.

         13           Q       What is the defendant's intelligence level, if you are

         14                    aware?

         15           A       He did not have intelligence testing while he was here.

         16                    His mother said that he had had testing in the past and

         17                    said that he had a third-grade reading level. That's

         18                    basically the only information I have. His behavior on

         19                    the unit indicated that he was not mentally retarded.

         20                    He appeared to have average to low average intelligence

         21                    based on his ability to remember unit policies and

         22                    interact with peers and participate in groups, et

         23                    cetera.

         24                               THE COURT: In the file, are you referring to

         25                    Dr. Emily's report? I'm talking to the attorney, not

4           1           you, Doctor.

2                   THE WITNESS:   Okay.

3                   MR. LITTLE:   In regards to which particular  
4                   portion?

5                   THE COURT:   There's a report from Dr. Steven  
6                   Emily, Ph.D, June 14, 1996.   He refers to a children's  
7                   court there was an evaluation by Dr. Tyrone Carter  
8                   where he tested 72 in the Wechsler Intelligence Scale  
9                   for children but he gave his own intelligence test and  
10                  he got a 46 and a 49 which is a point two-tenths  
11                  percentile and a point 0-three-hundredths percentile.

12                  MR. LITTLE:   And I believe that was quite low  
13                  in that particular evaluation.   I think he was  
14                  borderline.

15                  THE COURT:   Pardon?

5                  16                  MR. LITTLE:   I believe that that particular  
17                  report bears out the fact that he was of low  
18                  intelligence.

19                  THE COURT:   Well, there's a -- they thought  
20                  the way I read it that they -- they think that it's --  
21                  that's what he scored but they thought it's a gross  
22                  underestimation of the client's ability and as an  
23                  indicator of his deviant response.   The way I interpret  
24                  it, they just didn't buy the score.   He was given some  
25                  questions and this is what his response is.   If he was

5           1           malingering, it would be consistent also with  
2           malingering but that's what the scores were.

3                   MR. LITTLE: But you say was I referring to  
4           Dr. Emily's, no, I was referring to the report Dr.  
5           Rolli submitted.

6                   THE COURT: But I was just saying there are  
7           some test scores here. Okay. Proceed.

8                   MR. LITTLE: But -- but they were not  
9           performed more recently by this particular evaluating  
10          physician.

11                  THE COURT: Correct.

12                  MR. LITTLE: That's my point, Judge.

13                  THE COURT: Okay.

14                  MR. LITTLE:

15          Q       Did you administer a wide-range achievement test?

16          A       No, I did not.

17          Q       Wouldn't this type of test assist you in determining  
18          the defendant's academic capabilities and confirm that  
19          he is or is not extremely illiterate?

20          A       There was sufficient evidence to the contrary that  
21          testing was not necessary.

22          Q       And that was based on what, Doctor?

23          A       His ability to read and write while he was on the unit.

24          Q       Did he ever read and write to any particular person  
25          that was a member of the mental health staff?

5           1           A       Yes, he did. He took courses from the teacher here and  
2                       she informed me that she thought he was reading at a  
3                       junior high level. He also did some -- he rearranged a  
4                       telephone schedule on our bulletin board for the whole  
5                       unit in which he was able to write and spell every man  
6                       on the unit's name correctly. It was a complex  
7                       schedule. He basically demonstrated average abilities,  
8                       so it wasn't necessary to test him because we didn't  
9                       suspect that he was retarded.

10          Q       Doctor, you had an opportunity to have numerous  
11                       interviews and discussions with Mr. Sanders, correct?

12          A       That's correct.

13          Q       Approximately how many times did you, personally,  
14                       interview or observe the defendant?

15          A       I did formal interviews with him related to competency  
16                       three times but I had seen him a number of times before  
17                       that just as a regular patient on my unit. I saw  
18                       everybody at least once a month and I saw Mr. Sanders  
19                       more frequently because he had many requests of me.

20          Q       Do you recall what length of time each interview took,  
21                       how much time you spent with him?

22          A       It was around half hour to 45 minutes. Mr. -- Mr.  
23                       Sanders was not very tolerant of talking to me and  
24                       whenever he was talking to me, he was insistent that he  
25                       wanted the interview to end, that he was bored, that he

5           1           wanted to go back to his room, that he didn't want to  
2           2           talk to me, but I was able to interview him for 30 to  
3           3           45 minutes.

4           Q          Was there any medication prescribed for Mr. Sanders?

5           A          There was medication prescribed to him before he came  
6           6           to my unit. He was placed on a stimulant because of  
7           7           the perception that he might have attention deficit  
8           8           disorder. I discontinued that because it was not  
9           9           helpful to him. It's not my opinion that he needs a  
10          10          stimulant medication.

11          Q          Was the defendant tested for mental retardation?

12          A          Was he what?

13          Q          Tested for mental retardation.

14          A          What kinds of testing?

15          Q          Was there any scientific test to determine mental  
16          16          retardation?

17          A          You do an intelligence test if you suspect mental  
18          18          retardation. We did not suspect it as Mr. Sanders was  
19          19          able to read at a junior high level and do mathematics,  
20          20          et cetera.

21          Q          So that mental retardation has not been ruled out?

22          A          Yes, it has.

23          Q          Based on a scientific test?

24          A          Yes, it has. I don't -- I guess I don't understand  
25          25          what you mean by a scientific test.

5           1           Q     Intelligence test.  You just indicated that there is  
2                           such a test.

3                           THE COURT:  She indicated there was no basis  
4                           to give him one because of the --

5                           MR. LITTLE:  In her expert opinion.

6                           THE WITNESS:  That's correct.

7                           THE COURT:  Any other questions?

8                           MR. LITTLE:  Yes.

9           1           Q     Isn't it true that the score on the mini mental state  
10                           exam is a more accurate way to determine a diagnosis  
11                           than observing a person's behavior?

12           A     No, it is not.  A mini mental state exam is an exam  
13                           that is accurate insofar as the person taking the exam  
14                           is being honest and cooperative and giving their best  
6                           effort.  Anybody can pretend to not know the answers  
15                           and totally make the test illegitimate.

16                           

17           Q     You had discussions with Mr. Sanders during the  
18                           evaluation process, correct?

19           A     Yes, I did.

20           Q     And during that discussion with Mr. Sanders about the  
21                           courtroom and roles of the various persons in the  
22                           courtroom, is that correct?

23           A     Yes, I did.

24           Q     Isn't it true that Mr. Sanders during these discussions  
25                           was unable to grasp the concepts of the roles of

6 1 various individuals that are in the courtroom?

2 A He appeared to be unable to grasp but I believe that he

3 was purposely not repeating the information to me that

4 I told him. He was unable to do things at the most

5 rudimentary level, like say what a judge is.

6 Q Isn't it true that during your discussions with Mr.

7 Sanders he was unable to advise you what the charges

8 were against him?

9 A That's correct. He said various things when I asked

10 him the question several times and sometimes he said it

11 was a burglary. He never really got straight what all

12 the charges were when I asked him; but this does not

13 mean that I don't think he knows. I think he does

14 know.

15 Q As a final question, Doctor, does the defendant have a

16 difficulty verbally communicating with individuals?

17 A He appeared to have some difficulty communicating with

18 me. He used very simple language when he talked to me

19 but it was obvious when I overheard him talking with

20 peers and other people that he could speak much more

21 clearly. He had no difficulty communicating with his

22 peers and he had no difficulty making his needs known

23 on the unit.

24 Q One follow-up question, Doctor.

25 A Sure.



1 Q Is there a scientific test for malingering?

2 A The test for -- the way that you judge malingering is,  
3 again -- I'm not sure what you mean by scientific test.

4 Q A test other than your subjective opinion.

5 A I think my -- my opinion is considered to be the  
6 objective test. In order to judge whether somebody's  
7 malingering you observe their behavior and observe  
8 their behavior in various circumstances, so I believe  
9 that the accepted way to assess somebody for  
10 malingering is the way that I did it. I don't think  
11 there's another, you know, I don't know, questionnaire  
12 that you could give him that would help.

13 MR. LITTLE: Thank you, Doctor.

14 THE WITNESS: Sure.

15 THE COURT: I don't think redirect is needed.

16 MS. FALK: No.

17 THE COURT: The Court -- I will not even hear  
18 argument here. I think the Court's going to find the  
19 defendant competent to stand trial. The Court's going  
20 to specifically find this is a blatant case of  
21 malingering here. I also reviewed the records and  
22 previous reports here and I brought up the fact of the  
23 I.Q.'s that were off the board on the bottom end of 46  
24 and 49, I think something like that, in the forties,  
25 which are completely inconsistent with his entire

1 behavior and inconsistent with a previous finding at  
2 children's court that it was in the upper seventies.

3 He may not be the brightest man in the world  
4 but he's competent to stand trial and the Court will  
5 hold that he is competent. Doctor, thank you very  
6 much. We're going to discontinue at this point from  
7 taking testimony. Thank you.

8 THE WITNESS: Okay. Thank you.

9 (Witness excused)

10 MS. FALK: Your Honor, this case is extremely  
11 old and the State is requesting the earliest possible  
12 trial date.

13 THE COURT: The Court is going to reinstate  
14 the previous bail of \$500,000 set by Judge Sykes.  
15 We'll give you the earliest possible trial date.

16 MR. LITTLE: Judge, I'd like to make an  
17 additional statement.

18 THE COURT: Regarding what?

19 MR. LITTLE: My client. I'd like to make an  
20 oral motion to withdraw.

21 THE COURT: Based on what?

22 MR. LITTLE: Based on my client does not want  
23 our services any longer. He is now indigent. He  
24 indicated he either wants to represent himself or in  
25 the alternative have this matter referred to the Public

6 1 Defenders Office so that he can avail himself of their  
2 services.

3 THE COURT: Have you been the only one  
4 representing him during this period of time?

5 MR. LITTLE: Myself along with Attorney  
6 McNeely from Illinois. I was acting as his local  
7 counsel.

8 THE COURT: And he retained you and now he  
9 claims he's indigent?

10 MR. LITTLE: Yes, basically.

11 THE COURT: State's position? I think I have  
12 no choice here.

13 MS. FALK: I agree. I think we need to try  
14 to get this man signed up at the Public Defender's  
15 Office as soon as possible.

16 THE COURT: I'm going to not allow you to  
17 withdraw in case it turns out he doesn't qualify.

18 MR. LITTLE: I understand that.

19 THE COURT: We'll give you another date.  
20 We'll ask the Public Defender's Office to appoint  
21 someone for him and evaluate him.

22 THE CLERK: January 6 at 8:30.

23 MS. FALK: That's fine.

24 THE COURT: Do we have to keep him here to be  
25 evaluated? Right? I don't know how they appoint

7

1

someone.

2

THE CLERK: He'll be in custody on the bail

3

that you will set.

4

THE COURT: Okay.

5

MS. FALK: Right. He'll be at the jail.

6

THE COURT: He's not going anywhere unless he

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posted 500,000. Okay. Thank you very much.

8

MR. LITTLE: Thank you.

9

(End of proceedings)

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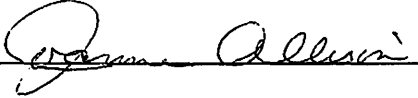
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1  
1 STATE OF WISCONSIN )  
2 ) SS  
3 MILWAUKEE COUNTY )  
4

5 I HEREBY CERTIFY that I am an official court  
6 reporter in and for Branch 42 of the Circuit Court in and for  
7 the County of Milwaukee, State of Wisconsin; that I was  
8 present at the taking of the foregoing proceedings and that I  
9 recorded said proceedings in machine shorthand; that I have  
10 carefully compared said machine shorthand notes with the  
11 foregoing transcript, consisting of Pages 1 through 29,  
12 inclusive, and find the same to be a full, true and correct  
13 copy in typewritten longhand of my original machine shorthand  
14 notes taken at said proceedings.

15 Dated at Milwaukee, Wisconsin, this 18th day of  
16 July, 1997.  
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22 Official Court Reporter, Br. 42  
23  
24  
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